

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re

Case No. 09-60877-A-7  
DC No. UST-2

IVAN VILLA

Debtor.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON UNITED STATES TRUSTEE'S MOTION FOR ORDER TO  
SHOW CAUSE WHY PATRICIA STEPHENS SHOULD NOT BE HELD IN  
CIVIL CONTEMPT AND SANCTIONED \$5,000**

A hearing was held November 2, 2010, on the motion of the United States Trustee for an order to show cause why Patricia Stephens should not be held in civil contempt and sanctioned \$5,000. The matter was deemed submitted as of November 2, 2010. The Court grants the United States Trustee's request for judicial notice in support of this motion. The Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined by § 157(b)(2)(A).

**FINDINGS OF FACT**

The United States Trustee ("UST") filed a complaint, on February 3, 2010, (adversary proceeding 10-1027) against bankruptcy petition preparer Patricia Stephens ("Stephens") seeking disgorgement, fines, and permanent injunction from acting

1 as a bankruptcy petition preparer. On May 28, 2010, Stephens  
2 signed a stipulation resolving the adversary proceeding. Stephens  
3 agreed to the entry of an injunctive order permanently  
4 prohibiting and enjoining her from acting as a bankruptcy  
5 petition preparer, including typing and preparing any bankruptcy  
6 document, in the Eastern District of California. On June 11,  
7 2010, this Court approved the stipulation.

8 After June 11, 2010, the UST became aware of two cases in  
9 which Stephens prepared the bankruptcy petition. On July 8, 2010,  
10 the UST's attorney sent a letter to Stephens indicating the UST  
11 was aware of her violations and the UST would seek remedies from  
12 the Bankruptcy Court, including contempt of court, for any  
13 further violations. A copy of the June 11, 2010 order approving  
14 the stipulation was included with the UST's letter.

15 The UST received a letter dated July 13, 2010 in response  
16 from Stephens, in which she stated that she called the court and  
17 was informed that no appearance was necessary for the last  
18 hearing on account of the stipulation. Stephens acknowledged  
19 receiving the UST's letter and agreed to stop accepting new  
20 customers and comply with the stipulation.

21 Despite Stephens' stipulation and pledge to comply with that  
22 stipulation, the UST has identified fifteen cases in which  
23 Stephens prepared the bankruptcy petition and three cases in  
24 which Stephens prepared bankruptcy documents. On September 15,  
25 2010, Stephens filed a letter seeking reconsideration of the June  
26 11, 2010 order approving the stipulation. On September 20, 2010,  
27 this Court denied Stephens' request for reconsideration.

28 On September 30, 2010, the UST filed this motion for an

1 order to show cause why Stephens should not be held in civil  
2 contempt and sanctioned \$5,000. On October 15, 2010, Stephens  
3 filed a response indicating she signed the stipulation under  
4 duress and wishes to continue preparing bankruptcy documents and  
5 petitions. Stephens also indicated that she did not comply with  
6 the June 11, 2010 order because there were people in desperate  
7 need of her help. A hearing was held on November 2, 2010, at  
8 which attorney Robin Tubesing appeared on behalf of the UST, but  
9 there was no appearance by Patricia Stephens.

#### 10 CONCLUSIONS OF LAW

11 Bankruptcy courts have a contempt power under 11 U.S.C. §  
12 105(a). In re Bennett, 298 F.3d 1059, 1069 (9th Cir. 2002).

13 Section 105(a) provides:

14 The court may issue any order, process, or judgment  
15 that is necessary or appropriate to carry out the  
16 provisions of this title. No provision of this title  
17 providing for the raising of an issue by a party in  
18 interest shall be construed to preclude the court from,  
sua sponte, taking any action or making any  
determination necessary or appropriate to enforce or  
implement court orders or rules, or to prevent an abuse  
of process.

19 11 U.S.C. § 105(a). The standard for finding a party in  
20 civil contempt is: "The moving party has the burden of  
21 showing by clear and convincing evidence that the contemnors  
22 violated a specific and definite order of the court. The  
23 burden then shifts to the contemnors to demonstrate why they  
24 were unable to comply." In re Bennett, 298 F.3d 1059, 1069  
25 (9th Cir. 2002).

26 In this case, the UST has provided evidence of eighteen  
27 bankruptcy petitions or documents prepared or typed by  
28 Stephens in violation of the June 11, 2010 order enjoining

1 Stephens from acting as a bankruptcy petition preparer,  
2 including typing or preparing any bankruptcy document.  
3 Stephens' response of October 15, 2010 argues she was under  
4 extreme "duress" when she signed the stipulation, but she  
5 does not provide any evidence of the UST's actions that  
6 caused her duress. Furthermore, the stipulation itself  
7 provides that Stephens is able to read English, the UST  
8 advised her to seek counsel, and she enters into this  
9 stipulation freely and voluntarily, under no duress or  
10 coercion. Stephens did not appear at the hearing to clarify  
11 her allegation of duress.

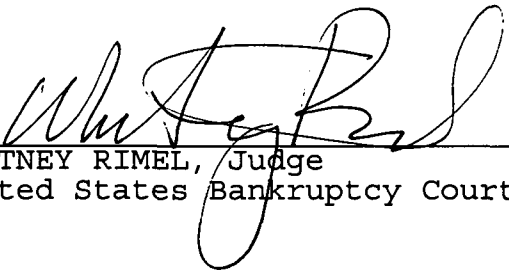
12 Stephens' response of October 15, 2010 specifies that  
13 she did not comply with the June 11, 2010 order because she  
14 was approached by people in need of her services. However,  
15 that is not a sufficient reason to justify the violation of  
16 a court order. Stephens agreed to stop working as a  
17 bankruptcy petition preparer in the stipulation of May 28,  
18 2010, which was approved by this Court on June 11, 2010.  
19 Stephens was aware when she signed the stipulation that she  
20 would need to refuse people seeking her services in  
21 bankruptcy cases. Furthermore, she again agreed to comply  
22 with the stipulation in her letter of July 13, 2010, and  
23 refuse new clients. Stephens' decision to continue to accept  
24 new clients because they need help instead of referring them  
25 to someone allowed to work as a bankruptcy petition preparer  
26 does not excuse her violations.

27 Based on the findings of fact and conclusions of law set  
28 forth herein, the UST's motion for an order to show cause why

1 Patricia Stephens should not be held in civil contempt and  
2 sanctioned \$5,000 shall be granted.

3 The UST shall submit a separate form of order consistent  
4 herewith.

5 DATED: 1/4/11

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8 WHITNEY RIMEL, Judge  
9 United States Bankruptcy Court  
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